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Aspire Power Ventures, LP

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PUBLIC UTILITY COMMISSION

March 19, 2021

Public Utility Commission of Texas  
Chairman Arthur D'Andrea  
1701 N. Congress Ave.  
Austin TX 78711

**Re: Project No. 51812, Repricing Certain Periods on the Week of February 15**

Dear Chairman D'Andrea:

The proposal to reprice real-time electricity in the Electric Reliability Council of Texas ("ERCOT") region for February 18-19 does not provide relief to the vast majority of retail electric customers in Texas. A chief motivation for the Senate's passage of S.B. 2142 seems to be the noble goal of benefitting Texas retail customers, but the proposed repricing does very little in this regard. The House State Affairs Committee should be commended for receiving testimony on this issue on March 16 and for its thoughtful deliberation. It is consistent with the process that the Commission has rightly employed in its considerations.

The vast preponderance of retail customers receive service under rates that do not vary in real-time with the wholesale prices in ERCOT. Public reports suggest that of the millions of residential retail customers in Texas, the number with variable rates pegged to wholesale prices were in the tens of thousands. Other than the small number of wholesale-rate residential customers, absent a rate design that relies on wholesale prices, the repricing of February 18-19, 2021, will affect the Load Serving Entities (*e.g.*, retailers, cooperatives, municipally-owned utilities) but not the rates that they charged their retail customers for February service. These Load Serving Entities participated in ERCOT both before and during the Winter Storm and are expected to be familiar with the ERCOT Protocols, Public Utility Commission Rules, and the Public Utility Regulatory Act.

As several witnesses noted in March 16's State Affairs hearing, the proposed repricing would be radical and dangerous to the market. It shifts money from one interest group to another. The proposed February 18-19 repricing does not relate to a pricing mistake at ERCOT. ERCOT followed its Protocols and Commission Rules. The resulting prices were correct, and although high, were consistent with the scarcity in the market and the efforts ERCOT was making to protect grid stability. No one should have expected anything different to occur, and the market depends

on these price signals to incentivize new generation as well as conservation during an emergency event.

The February 18-19 event should be distinguished from the pricing adjustments that relate to the Commission orders issued on February 15 and 16, 2021. Quite unlike February 18-19, at the beginning of ERCOT's load shedding, ERCOT and the Commission identified a software glitch that misread forced load shedding as a reduction in demand for electricity instead of an emergency call for the deployment of all generation possible. Also unlike the proposed changes to the February 18-19 prices, the ERCOT Protocols have a codified process for resettling markets where computer errors occur. In this case, the software glitch incorrectly depressed energy prices. On February 15, 2021, the Commission issued an order correcting pricing related to the software glitch from the beginning of the load shed onward. On February 16, 2021, the Commission limited the correction to time periods after the order's issuance.<sup>1</sup> Existing ERCOT processes permit market participants to challenge any remaining mispricing in an alternative dispute resolution process and at the Commission. The proposed changes to prices on February 18-19 were not caused by computer glitches and are outside of those contemplated in the ERCOT Protocols; so, market participants could not have reasonably anticipated such price changes.

Texas is taking actions to address the issues with retail products that are pegged to wholesale prices. For example, the Commission has opened a proceeding to prohibit residential products with that design. Additionally, the Attorney General has opened an investigation into providers offering these products. To the extent that the Legislature seeks to provide relief for customers under such retail products, it certainly has the ability to do so; but S.B. 2142 does not offer a practical tool for the purpose.

We believe the State could give retail residential customers enrolled on variable rates relief from the high prices of the week of February 15 for a fraction of the amount at issue in S.B. 2142. Estimating that there were approximately only 40,000 residential customers on wholesale price-indexed plans in ERCOT, the estimated primary impact to residential customers of electricity priced at the \$9,000 cap is roughly \$56 million – obviously a tiny fraction of the billions in proposed transfers in S.B. 2142. If the State seeks to provide direct relief to customers, repricing the wholesale market on February 18-19 is not the proper tool. Senate Bills 1579, 1580, and 1757, by way of example, offer reasoned options for providing customers relief while maintaining the integrity of markets in Texas.

Repricing February 18-19, 2021 also risks being confiscatory for certain generators. Natural gas prices in this time period were extremely high, with generators paying \$600/MMBTU or more in certain cases. Gas was priced about \$2.50/MMBTU before the Winter Storm as a point of reference. S.B. 2142 does not provide relief for generators whose generation costs would not be recovered after the repricing. In addition to raising legal questions related to takings, the

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<sup>1</sup> The Commission's thought process on limiting this order to only prospective application may be informative to a decision the proposed retroactive repricing of February 18-19.

repricing would create significant new risk for those considering investing in new generation plants in Texas.

Winter Storm Uri was tragic. It caused Texans to not only lose their power but even more tragically, dozens perished. Texas' response should be commensurate with the harm that the Winter Storm created. However, repricing wholesale electricity prices in February 18-19, as contemplated in S.B. 2142, fails to do this. The Bill shuffles billions of dollars among wholesales market participants but does nearly nothing for Texas customers. In the process, as noted in the March 16 State Affairs hearing, S.B. 2142 would increase market risk and in the process drive prices upwards for all Texans for years to come--both in electricity prices and in other products.

Thank you for your service to Texas, especially in this challenging time. Your thoughtful leadership has helped the State past the Winter Storm.

Sincerely,

*/s/ Adam Sinn*

Adam Sinn

Cc: House State Affairs Committee